

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
NATIONAL FEDERATION OF	:	DETERMINATION
ITALIAN-AMERICAN SOCIETIES, INC.	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, National Federation of Italian-American Societies, Inc., 7406 New Utrecht Avenue, Brooklyn, New York 11204, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 807684).

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on September 20, 1990 at 9:15 A.M. Petitioner appeared by Arnaldo Ferraro and Josephine Frediani. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly denied petitioner's application for exempt organization status.

FINDINGS OF FACT

On or about July 12, 1989, Josephine Frediani, president of the National Federation of Italian-American Societies, Inc., submitted to the Division of Taxation an application for an exempt organization certificate seeking an exemption from sales and use taxes under Tax Law § 1116(a)(4).

By correspondence from the Division of Taxation dated November 20, 1989 the Division denied petitioner's application for exempt organization status. The explanation included a description of the organizational and operational tests applied for the purpose of

determining whether the organization has met certain criteria. The Division stated the basis for its conclusions, in pertinent part, as follows:

"Your corporation fails to meet the organizational test for the following reasons:

1. The stated purposes specified in Article 2 of your Certificate of Incorporation are not exclusively charitable within the above definition of that term.
2. Your Certificate of Incorporation fails to dedicate the assets of the corporation to an exempt purpose, upon dissolution.

\* \* \*

Your corporation does not meet the operational test for exemption. The information presented discloses that, although some of your activities may be charitable in nature, it is substantially operated for civic and social welfare purposes. Its community benefit programs bring about civic betterments and social improvements, thus promoting the common and general welfare of the community. While such activities serve a civic/social welfare purpose it does not serve a charitable or other exempt purpose specified in the statute.

In addition, we note that over 50% of your total expenditures for 1988 were disbursed for social activities, i.e. Dinner dance, Sports Day, and trips. Social activities, also do not further and [sic] exempt purpose specified in the statute. Also, we note that your total expenditures for Villa Roma trip exceeds the income for that affair. Accordingly, it cannot be said that your earnings do not inure to the benefit of members of [sic] private individuals.

Further, we note that the Federal exemption received by your corporation is under section 501(c)(4) of the Internal Revenue Code, as a social welfare organization, rather than section 501(c)(3), as a charitable organization, which is identical to the Sales Tax Law.

Since your corporation is not both organized and operated exclusively for one or more of the purposes specified in section 1116(a)(4) of the Tax Law, it does not qualify for sales tax exemption."

The National Federation of Italian-American Societies, Inc. is a community service organization founded in 1964 and incorporated under the not-for-profit organization law of the State of New York in 1967. Submitted into evidence was a document which enumerated the community services offered by the Federation as follows:

- "1. Assisting people in applying for naturalization and offering citizenship courses in preparation for the naturalization examinations.
2. Helping people in their applications for pensions, Medicare, Medicaid and Social Security matters.
3. Helping newly arrived immigrants in obtaining gainful employment.

4. Assisting immigrant students in obtaining adequate educational placement and get through the transitional difficulties.
5. Offering free summer arts and crafts programs for children.
6. Organizing surplus food distributions to Senior Citizens and needy people.
7. Contributing to charitable initiatives by helping people in desperate need of assistance.
8. Offering voter registration programs.
9. Organizing recreational activities for youngsters and adults alike.
10. Offering free English language classes."

According to both its certificate of incorporation and its by-laws, the following are the purposes for which this organization is organized:

- "a) To promote fellowship among, and advance the social, cultural, recreational, and civic interests, of persons of Italian origin or descent;
- b) To maintain and preserve the cultural heritage of their country of heritage and of the United States;
- c) To help advance and promote a better understanding of United States citizenship and community responsibility;
- d) To promote, contact and obtain cooperation among such organizations and societies, of persons of Italian origin in the United States as may become members of these federations;
- e) To establish a Federation center in New York State for the purpose of assisting in the coordination of activities of member organizations and societies, and disseminating information to and among member organization; and to arrange gatherings on holidays and on other occasions.
- f) To exercise any, all and every power in carrying out the corporation purpose that may be conferred upon cooperations formed under the membership cooperating law of the state of New York, provided, however, that the cooperation is not organized for profit and no part of its net earnings shall inure to the benefit of any particular, subscriber, number, director, officer, of [sic] any other individual."

Pursuant to a request from the Division of Taxation, petitioner submitted additional information with respect to financial information of the organization. The 1988 Statement of Receipts and Expenditures detailed the income and disbursements for calendar year 1988 as follows:

"Receipts:

Dues	\$ 891.00
Adver.	315.00
Atlantic City Trip	1726.00
Villa Roma	795.00
Donations	1006.00
Sport Food Program	728.00
Fund Raiser:	
Dinner Dance and Book	4665.00
Raffles and Tickets	<u>5501.00</u>
Total Income 1988	\$ 15627.00

General Expenses 1988	
Rent	\$ 5460.00
Con Edison	305.83
NY Telephone	350.29
Postage	328.02
Adv.	170.00
Stationary [sic]	6.47
Donations	116.00
Photographer	25.00
Mass Card	10.00
Subscriptions	140.00
Sport Day	1408.61
Copy Machine Install	335.93
I.R.S. Fee	150.00
Dinner Dance	5128.00
Hall	1711.93
Journal	812.78
Ticket	47.00
Villa Roma	955.35
Atlantic City	937.00
Misc	<u>869.01</u>
Total Expense 1988	\$ 19267.22
Income/Loss	\$ (3640.22)"

Information submitted to the Division of Taxation in addition to its application indicated that as part of its activities petitioner sponsors several educational courses conducted by certified teachers and volunteer personnel, holds and supervises arts and crafts courses during the summer for children ages five to seven, offers an English course for persons who are foreign born and unable to read and write the English language, offers a naturalization course for persons who intend to become American citizens, as well as participates in lectures and discussion groups relating to youth and senior citizen services and programs, immigration and naturalization, job placement, education and food stamps.

According to the testimony provided by Arnaldo Ferraro, founder of petitioner, the

activities organized by the corporation include offering services to the community which prevent cruelty and harm to children, as well as sponsoring special programs for children with respect to crafts and amateur sports. In addition, petitioner donates funds to the Sacred Heart Spiritual Society, an agency that volunteers services to the poor and needy, as well as to Peter Jude Ventring Youth Center, a volunteer, non-profit organization for children.

Also submitted into evidence was an addition to the by-laws of petitioner, executed by order of the president on February 3, 1988. It indicated that all of the assets of the organization will be dedicated solely to an exempt purpose upon its dissolution.

The Internal Revenue Service has granted petitioner an exemption from Federal income tax under Internal Revenue Code § 501(c)(4) which includes the following organizations:

"Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

#### SUMMARY OF THE PARTIES' POSITIONS

Petitioner contends that it has shown beyond any doubt that the organization is a charitable organization under the Tax Law. Petitioner contends that it is an organization which serves the community and that it should be granted exempt status since it qualifies under Tax Law § 1116(a)(4) and has also been recognized by the Department of Charitable Registration of the State of New York and the Internal Revenue Service as a charitable organization.

The Division of Taxation contends that neither the organizational nor the operational tests pursuant to the statute have been met and that the Division of Taxation properly denied the application for exempt status. The Division further notes that the organization, to meet the criteria of the statute, must operate exclusively for charitable purposes and, although it conducts activities that are commendable and socially good for the community, the organization does not meet the exclusive requirement with respect to its activities required by the statute.

#### CONCLUSIONS OF LAW

A. Tax Law § 1116(a)(4) provides an exemption from sales and use taxes to:

"Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office".

B. Tax Law § 1116(a)(4) is virtually identical to and patterned after Internal Revenue Code § 501(c)(3) (Matter of Rockwood Park Concerned Residents, State Tax Commn., August 28, 1987; Matter of Rochester Area Health Maintenance Organization, State Tax Commn., July 16, 1985). In comparison of the two provisions, the language contained in IRC § 501(c)(3) is set forth below:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

C. In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus is on the provisions of the organizing documents. The documents must limit the purposes of the organization to one or more exempt purposes and cannot expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes (20 NYCRR 529.7[c][1][i]).

Petitioner's exempt purposes are clearly set forth by both its certificate of incorporation and its by-laws. Inasmuch as the purposes are of a social and community advancement nature, they clearly are broader than those specified in Tax Law § 1116(a)(4). It must therefore be

concluded that petitioner did not meet its burden of proving that it falls under the criteria specified by the organizational test.

D. In determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities. In pertinent part, 20 NYCRR 529.7(d) describes the operational test relating solely to the organization's activities as follows:

"Activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law and described in subdivision (e) of this section. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

The evidence and testimony offered by petitioner supported the conclusion that more than an insubstantial part of its activities was in furtherance of non-exempt purposes. The financial data submitted for the calendar year 1988 clearly identified activities which provided a major portion of its benefit to the members of the organization. Although the petitioner organization operates to serve the community, support the prevention of cruelty to children, assist persons in the community who are ill or in need, attempt to prepare persons for citizenship and provide periodic courses on a volunteer basis, the financial data and the description of the types of activities still result in a finding that a substantial portion of petitioner's revenue and expenditures appear to be committed to non-exempt purposes thereby rendering it inconceivable that the Federation operated exclusively for one or more exempt purposes.

E. Petitioner is exempt from Federal taxation by virtue of section 501(c)(4) of the Internal Revenue Code and not section 501(c)(3), which is referred to consistently in the case law and regulations relating to Tax Law § 1116(a)(4) (see, Matter of Jesus Revivals, Inc. v. State Tax Commn., 139 AD2d 875, 527 NYS2d 603; Matter of Fraternal Order of Police, Empire State Lodge, Inc., State Tax Commn., June 28, 1985; Matter of Rockwood Park Concerned Residents, *supra*; Matter of Rochester Area Health Maintenance Organization, *supra*; 20 NYCRR 590.7[3][iii]). If the Federal status is dismissed as a mere technicality, petitioner still fails in its proof that it meets the criteria for exemption under the regulations that specifically detail those rules for attaining exemption under Tax Law § 1116(a)(4).

F. The petition of the National Federation of Italian-American Societies, Inc. is hereby denied in all respects.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE